IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4987 of 2002

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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S.D. BHATT

Versus

STATE OF GUJARAT

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Appearance:

MR PARESH UPADHYAY for the Petitioner

MR PR ABICHANDANI, AGP for Respondents Nos. 1-6

MR BA VAISHNAV for Respondent No. 7

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of Order: 18/11/2002

ORAL JUDGEMENT

Heard the learned advocates.

Leave to delete respondent no.8.

Rule returnable today. Mr.P.R.Abichandani appears for and waives service on behalf of respondents nos.1 to 6. Mr.B.A.Vaishnav appears for and waives service on behalf of respondent no.7.

The petitioner before this Court is a retired Principal of a Non-Government Secondary School. The petitioner joined service as Assistant Teacher on 14th June, 1965 in a Non-Government Grant-in-Aid Secondary School. He resigned from the said school on 22nd June, 1975 and joined another Non-Government Grant-in-Aid School on 23rd June, 1975. Once again he resigned on 9th August, 1984 and joined the respondent no.8 - School as Principal on 10th August, 1984. He resigned from the respondent no.8 School on 18th September, 1989. Since then, the petitioner joined the respondent no.7 - School as Principal on 19th September, 1989 and on reaching the age of superannuation he retired from the service on 31st October, 1999. It is the grievance of the petitioner that though the petitioner has retired as far back as on 31st October, 1999 he has been denied pensionary benefits on non-extent grounds.

It appears that the petitioner has been refused pensionary benefits on the grounds (a) the last school i.e. the respondent no.7 - School from where the petitioner retired from service was not a Grant-in-Aid School; and (b) the petitioner had resigned from school where he had served earlier.

In answer to the notice issued by this Court one Shri J.L.Vasava, Senior Superintendent, Commissionerate of Mid-Day Meals & Schools, Gandhinagar has filed counter affidavit and has produced Government Resolutions dated 5th February, 1980 and 28th September, 1992. He has also produced Government Resolution dated 1st March, 1974 issued in respect of break in service of school teachers.

Be it noted that indisputably the petitioner has served as a secondary school teacher/principal continuously from 14th June, 1965 till 31st October, 1999 without any break. The Government Resolution dated 1st March, 1974 is an amendment to the earlier Government Resolution dated 31st December, 1971. A bare perusal of the said Resolution dated 1st March, 1974 discloses the Government's intention to count all services of teachers of Non-Government Grant-in-Aid Schools as pensionable service irrespective of the resignation/termination of service provided there are not more than six breaks in

the service, not more than four of which should be due to resignation. Hence, it is evident that even in case a secondary school teacher resigns from one Grant-in-Aid School and joins another Grant-in-Aid School, services rendered in both such schools shall be considered pensionable. Even in respect of Non-Grant-in-Aid Schools the Government has resolved under its Resolution dated 5th February, 1980 that teachers serving in such Non-Grant-in-Aid Secondary Schools shall be entitled to the pensionary benefits provided the concerned school deposits its contribution to the Contributory Provident Fund or the Pension Fund with the State Government. The said facility has been discontinued under the Government Resolution dated 28th September, 1992 in respect of those Non-Grant-in-Aid Schools which have been recognized in the month of June, 1992 or thereafter. Obviously, the respondent no.7 School has been recognized long before June, 1992. The teachers serving in the said school, therefore, can not be denied pensionary benefits under the aforesaid Government Resolution dated 28th September, 1992.

In the circumstances, the petition is allowed. It is declared that the petitioner is entitled to pensionary benefits for the services rendered by him as a Secondary School Teacher/Principal from 14th June, 1965 till 31st October, 1999. The respondent no.7 School and the concerned authorities are directed to process the pension papers of the petitioner expeditiously and to issue pension payment order in favour of the petitioner. The respondent no.7 - School shall deposit the amount of contribution to the Contributory Provident Fund or the Pension Fund as envisaged in the Government Resolution dated 5th February, 1980. The necessary procedure shall be completed and the pension payment order shall be issued on or before 31st March, 2003. In the event the respondent fails to issue pension payment order by 31st March, 2003, the petitioner shall be entitled to receive interest at the rate of 10 per cent per annum from the date such amount has become due till the date the same is paid to the petitioner. Rule is made absolute with costs.

( Ms. R.M. Doshit, J. )

/sakkaf